



COLORADO
Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

Stephanie DeJong, Unit Chief
NPDES Enforcement Program
United States Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80207-1129
Via Email

December 27, 2016

Dear Ms. DeJong:

The Colorado Water Quality Control Division is in receipt of the United States Environmental Protection Agency Region 8 (EPA) letter, dated September 26, 2016, providing comments on Colorado's 2017 Clean Water Facility Inspection Plan. This letter serves as the division response to EPA's comments. The division is providing clarification through responding to EPA's comments versus revising our inspection plan, as the information provided in this letter is beyond the scope and purpose of the inspection plan document. The division has not modified the inspection plan provided to EPA on August 19, 2016 and the division considers that version of the plan to be final so that we can move forward with implementation of the plan. However, the division remains open to future modifications and providing additional information to EPA upon request.

The driving factor in the division's inability to meet the goals set forth in the EPA's Clean Water Act National Pollutant Discharge Elimination Compliance Monitoring Strategy (CMS) is resource limitations and restrictions. The division's clean water program receives funding to conduct compliance oversight from three different sources; federal funding, State of Colorado General Fund, and cash funding from permit fees. The Colorado Legislature allocates the clean water program's funding into specific sectors: commerce and industry, construction, municipal separate storm sewer (MS4), public and private utilities pesticides, and water quality certifications (which includes 401 certifications). All of the division's clean water functions utilize funding from the six sectors. Current funding levels for the commerce and industry and MS4 sectors are not adequate to meet all needs. Given these restrictions and limitations, the division has determined for the programmatic areas identified in the EPA's letter, limiting compliance oversight to the levels identified in the inspection plan for 2017 is necessary.

The division has been engaged in a public process since 2014 to seek additional funding through legislative action. The division has identified in these public meetings and in information provided to the legislature that the current funding results in the division be unable to meet the CMS. In addition, the division has identified to EPA in previous discussion that additional federal funding would be advantageous to meeting clean water program goals.

The division will evaluate resources and priorities annually with the development of the inspection plan in future years. The division is committed to the strategic goal of protecting water quality standards through implementation of the federal Clean Water Act and Colorado Water Quality Control Act, including providing sufficient oversight of NPDES discharges. If additional resources become available, or flexibility exists to reallocate resources from other division activities in these sectors, future inspection plans will reflect this.



The division's responses to EPA's concerns in the September 26, 2016 letter are:

1. **Comments on alternative CMS plans:** "The Plan submitted by the CWP would constitute such an alternative CMS plan; however, several conditions must be met in order for the Plan to qualify as an alternative CMS plan. Page 3 of the CMS describes those conditions."

Response: With the exception of the compliance strategy presented for the construction sector (Part 10 of the inspection plan), it is not the division's intention for any other portion of the inspection plan to provide an alternative compliance monitoring strategy in accordance with the Clean Water Act National Pollutant Discharge Elimination Compliance Monitoring Strategy" issued in 2014 ("the CMS"). Therefore, outside of Part 10, the inspection plan does not address the conditions in CMS for alternative compliance monitoring strategies.

2. **EPA comments on MS4 oversight:** "The first programmatic area of concern is MS4s. The Plan would constitute an alternative CMS plan, because the CWP commits to doing off-site desk audits in the form of annual report review without having first conducted an on-site compliance evaluation during a previous year at many, if not most, of the MS4s in Colorado's universe. The CWP has conducted on-site inspections at only five of the state's 116 MS4s in the last five years, and all five of those inspections were conducted as joint inspections with the EPA with the EPA serving as the inspection lead. The scope of the EPA's evaluation of an alternative CMS plan is to evaluate the appropriateness and ensure program integrity. Although a stated purpose of the CMS is to better focus inspection resources, the lack of inspection resources focused by the CWP on MS4 inspections over time is a concern especially given that a strong MS4 program can have significant water quality impacts partially due to, among other factors, increased compliance of construction and industrial stormwater sites within an MS4's jurisdiction. The CMS states that the flexibilities for meeting the goals should include an explanation that includes implications on CMS planning in future years. The Plan should address this resource concern and discuss how the CWP will ensure adequate inspection resources will be focused on MS4s both in FY 2017 and in future years. In addition, the following conditions for MS4s need be addressed in the Plan in order to be approved as part of an alternative CMS plan:

- Off-site desk audits must be appropriately recorded as a compliance monitoring activity in the Integrated Compliance Information System;
- Off-site desk audits must be conducted by appropriate personnel; and
- The CWP must document its evaluation of a list of five facility-specific questions on page 3 of the CMS to demonstrate that off-site desk audits are appropriate compliance monitoring activities for the MS4s."

Response: It is not the division's intent for the annual report reviews to meet the criteria for off-site desk audits that count towards implementation of an approved CMS plan. The division lacks the resources to conduct the necessary additional activities necessary to meet these criteria. The division accepts that the division's inspection plan does not meet the goals included in the CMS for this programmatic area. A discussion of the division's limitations and restrictions on resources that is the basis for not being able to meet these goals was summarized above.

3. **EPA comments on Industrial stormwater oversight:** "The second programmatic area of concern is industrial stormwater. The Plan commits the CWP to onsite compliance evaluations at 2% of permitted facilities, along with reconnaissance inspections at an additional 0.5% of facilities, for a total coverage of 2.5% in FY 2017. This coverage deviates from the CMS goal of 10% coverage annually. Although the Plan describes how the CWP would prioritize its selection of industrial storm water permittees for inspection, it lacks other information to qualify as an alternative CMS plan.

The Plan should describe the rationale for this deviation from the national goal, justifying why resource trade-offs were made with other program areas and why other areas would receive more attention at the expense of industrial storm water. Furthermore, the Plan needs to explain how the CWP has determined that the low attention on industrial stormwater will not have negative public health or environmental impacts in Colorado. This last question is especially important given the CWP's low level of oversight of MS4s, which have their own systems of assuring compliance at stormwater sites within their jurisdiction when they are properly implemented. The EPA and CWP have discussed the EPA conducting inspections and, as necessary, following up with enforcement for industrial stormwater facilities in FY 2017. However, the CWP should not continue to rely on the EPA's inspection resources to provide this type of coverage."

EPA comments on minor process water facilities: "The third programmatic area of concern is minor process water facilities (i.e. traditional non-majors). The Plan commitment is 98 compliance evaluation inspections in FY 2017 representing less than 7% coverage across this universe. The CMS goal is to inspect every traditional non-major at least once every five years including assuring that facilities discharging pollutants contributing to surface water impairments receive a comprehensive inspection. Because the proposed rate of coverage is less than what would be required over a sustained five-year period (i.e. 20%) in order to meet the inspection goal, the Plan should articulate how the CWP will ensure that the five-year rolling goal is achieved despite the resource constraints described in the Plan for FY 2017. If that goal is not expected to be achieved, the Plan should describe the rationale for this deviation in the same way that it should be described for industrial stormwater in order to qualify as an alternative CMS plan."

Response: The division accepts that the division's inspection plan does not meet the goals included in the CMS for these programmatic areas. A discussion of the division's limitations and restrictions on resources that is the basis for not being able to meet these goals was provided above. The division is not asserting that division resource allocation's to these compliance activities "will not have negative public health or environmental impacts in Colorado." However, it is the division's goal to use a combination of inspection targeting, assistance, and enforcement, as discussed in the inspection plan and the division's enforcement management strategy, to reduce the potential for water quality impacts to the extent possible given resource limitations and restrictions.

Please contact me at (303) 692-6392 or nicole.rowan@state.co.us if you have further questions about our inspection plan.

Sincerely,

Nicole Rowan, P.E.
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Water Quality Control Division

Cc: Michael Boeglin, USEPA Region 8
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